

Every department store in the loop and probably some outside the loop would have started second basement salesrooms within a few years if the opinion of the court had said that the Mandel Brothers "subway" is a good thing and the Chicago ordinance is not valid.

The city ordinance which Mandel Brothers were trying to break down says that no department store shall operate a second basement salesroom more than twenty feet below street grade.

Health Commissioner Young started action against Mandel Brothers because their second basement salesroom is over 30 feet below street grade.

Judge John R. Caverly in the Municipal Court on April 22 last year concurred with Attorneys Tolman and Redfield for Mandel Brothers that the ordinance is "invalid," "unreasonable," "unconstitutional." The city appealed.

Leon Hornstein's brief for the city was a powerful argument against "throwing open to the public deep cellars far below the street level." He showed that while the case was pending a man was killed in a subway (North American Restaurant) through an explosion, and in a subway fire a large number of firemen were overcome while fighting fire. He argued:

"In case of a fire hot enough to start a sprinkler system the first thing that would happen would be the dampening of the electric light wires. Basements and sub-basements would be plunged into darkness. Hundreds of struggling women and children would be madly plunging about with no way of finding the nearest escape to the outer air. It would be impossible to render assistance from the outside. Water would be pouring down on them and exits every moment become less accessible.

"Is it necessary that there should first be an overwhelming catastrophe—some great holocaust—before a legislative body charged with the enactment of laws to protect human life can grasp a situation and act for the safety of the public? It would be the old story of locking the barn after the horse is stolen."

While the city pushed the case on the claim of more safety for the public, the health department officials feel that an equally big point has been gained in health protection of State street workers. Charles Ball, chief sanitary inspector, said to a Day Book reporter today:

"When it was first proposed to amend the building code so as to permit second basement salesrooms we protested on health grounds.

"There is no ventilating apparatus made which will carry a pure air supply to a second basement during the whole day in a satisfactory way. The air in the Chicago loop district is bad enough on the street outside. Even if it is washed and then pumped down into a basement it is a hard problem to distribute it properly and to maintain it at a fair average of purity.

"At the time the ordinance was up, Siegel-Cooper's store of New York was pointed to as a success. Gelatin exposures by our men in Siegel-Cooper's showed queer things. For some reason a second basement has an abnormal amount of dust. Dampness, lack of daylight and other elements came in to show it as bad public health policy.

"If the ordinance had been declared valid it would have meant thousand of employes in downtown sub-basements would in future years be at work where an air supply is abnormal and vicious to health."

The opinion of the State Supreme Court, which was delivered by Justice Frank H. Dunn, upheld the city ordinance particularly in the so-called discrimination against department stores, which the State street stores objected to.

The decision says: "The ordinance prohibits the retail sale of goods, but